

IN THE DISTRICT COURT OF HOLT COUNTY, NEBRASKA

TINA R. DOHRMAN,

Plaintiff,

vs.

**SCHOOL DISTRICT NO. 0025 OF HOLT
COUNTY, NEBRASKA, a/k/a WEST HOLT
RURAL HIGH SCHOOL, a Political
Subdivision of the State of Nebraska,**

Defendant.

Case No. CI01-10

JUDGMENT

DATE OF TRIAL: November 19, 2001.

DATE OF RENDITION: February 4, 2002.

DATE OF ENTRY: See court clerk file-stamp date (§ 25-1301(3)).

APPEARANCES:

For plaintiff: Scott J. Norby, of McGuire and Norby, without plaintiff.

For defendant: Randall Wertz, of Recknor & Associates, without officer or employee of defendant, and on brief, Steve Williams, of Recknor & Associates.

SUBJECT OF JUDGMENT: Decision on the merits following trial to the court without a jury.

PROCEEDINGS: See journal entry filed following trial.

FINDINGS: The court finds and concludes that:

1. Both parties' counsel have, through their thorough and diligent work in developing a stipulation of facts, joint issues statement, and well-written briefs, presented a complex case in an admirable fashion. Although the issues are complex, the basic question presented is whether the plaintiff's individual teaching contract, which incorporates a collective bargaining agreement, compelled the defendant school district to count credit hours earned in undergraduate-level courses for advancement on the salary schedule from the "BA+18" column to the "BA+27" column.

2. The stipulation of facts, received as Exhibit 31, thoroughly sets forth the underlying facts.

That stipulation provides:

1. Defendant, School District No. 0025 of Holt County, Nebraska, is a political subdivision of the State of Nebraska and is also known as West Holt Rural High School (hereinafter "School District"). The affairs of the School District are administered by its Board of Education. The School District is an "employer" as that term is defined in Neb. Rev. Stat. § 48-1229(1) (Reissue 1998) and Neb. Rev. Stat. § 48-801(4) (Reissue 1998).

2. Tina R. Dohrman (hereinafter "Dohrman"), is employed as a permanent certificated employee of the School District, and was employed for the 2000-01 school year under the terms of a 2000-01 Teacher's Contract, a true and correct copy of which is received into evidence as Exhibit 21.

3. Dohrman is represented for purposes of collective bargaining economic terms and conditions of employment by the West Holt Education Association ("WHEA"). The WHEA is a "labor organization" as defined by Neb. Rev. Stat. § 48-801(6) (Reissue 1998). The WHEA is recognized by the School District as the exclusive bargaining agent for the bargaining unit comprised of the certificated teaching staff employed by the School District.

4. Under the authority of the Nebraska Industrial Relations Act, Neb. Rev. Stat. §§ 48-801 et seq. (Reissue 1998), the WHEA, as recognized bargaining agent, enters into annual Negotiated Agreements with the School District which establish economic terms and conditions of employment on behalf of members of the bargaining unit, including Dohrman.

5. Throughout the term of Dohrman's employment with the School District, the WHEA and the School District have entered into Negotiated Agreements which include an indexed salary schedule on which members of the bargaining unit are placed for purposes of compensation for the term of the Negotiated Agreement. The structure of the salary schedule includes a horizontal column under which employees are placed based on their educational attainment as evidenced by college transcripts or other educational records. The salary schedule also includes a vertical column identified as "Steps" on which employees are placed based on their number of years of employment with the School District.

6. Dohrman was initially employed by the School District as a certificated employee the 1990-91 school year under the terms of a 1990-91 Teacher's Contract, a true and correct copy of which is received into evidence as Exhibit 22. At that time, Dohrman held a Bachelors degree in Education, together with a total of seven post-graduate credit hours for successful completion of "Education 400" (one credit), "Child Psychology" (three credits), and "Elementary Reading" (three credits). Based on these educational credentials and a year of prior service with another school district, the School District placed Dohrman, for purposes of compensation, on the Step 1, BA column of the 1990-91 salary schedule made a part of the Negotiated Agreement entered for the 1990-91 school year, a true and correct copy of which is received into evidence as Exhibit 8. Under said salary schedule, the horizontal column referencing "BA" refers to a bachelors degree, "MA" refers to a masters degree, and the numerals following degree attainment refer to credit hours earned subsequent to such degrees.

7. For the 1991-92 school year, Dohrman was employed under the terms of a Teacher's Contract, a true and correct copy is received into evidence as Exhibit 23. On August 8, 1991, Dohrman earned an additional three college credit hours from Chadron State College for successfully completing a class entitled "Sandoz Workshop." As a result of this additional educational attainment, Dohrman was placed on the Step 2, BA+9 column of the salary schedule made a part of the Negotiated Agreement between the WHEA and the School District for the 1991-92 school year, a true and correct copy of which is received into evidence as Exhibit 9.

8. The 1992-93 school year, Dohrman was again employed as a certificated employee of the School District, and for purposes of compensation, she was placed at the Step 3, BA+9 column of the salary schedule which is received into evidence as Exhibit 10; the 1993-94 school year she was placed at the Step 4, BA+9 column of the salary schedule which is received into evidence as Exhibit 11; for the 1994-95 school year she was placed at the Step 5, BA+9 column of the salary schedule which is received into evidence as Exhibit 12; and for the 1995-96 school year was placed at the Step 6, BA+9 column of the salary schedule which is received into evidence as Exhibit 13.

9. The 1996-97 school year, Dohrman was employed under the terms of a 1996-97 Teacher's Contract, a true and correct copy of which is received into evidence as Exhibit 24. Prior to the commencement of said school year, Dohrman had earned an additional 12 college credit hours for successfully completing the following courses: 2 credit hours for "Cooperative Learning" at Wayne State, 1 credit hour for "One Act Plays" from Wayne State, 3 credit hours for "Seven Habits Training" from Wayne State, 3 credit hours for "SCIPP Training" from Kearney, 1 credit hour for "Computer Literacy" from Wayne State, and 2 credit hours for "Fine Arts Frameworks" from Chadron State. Based on this additional educational attainment, Dohrman was placed for purposes of compensation on the Step 7, BA+18 column of the salary schedule made a part of the 1996-97 Negotiated Agreement between the WHEA and the School District, a true and correct copy of which is received into evidence as Exhibit 25.

10. The 1997-98 and 1998-99 school years, Dohrman continued to be employed as a certificated employee of the School District and her compensation and placement on the negotiated salary schedule for said years remained at Step 7, BA+18. Dohrman remained at Step 7 on the salary schedule for those years because the experience or Step vertical column of the salary schedule did not extend beyond seven years for a BA+18 placement. The 1999-2000 school year, Dohrman was compensated and placed on the Step 8, BA+18 column of the salary schedule. The 1997-98 salary schedule is received as Exhibit 27, the 1998-99 salary schedule is received as Exhibit 28.

11. In May, 1998, Dohrman earned one college credit from Wayne State for "Internet for Educators," and in May, 2000, earned an additional credit hour from Wayne State for "Integrated Internet for the Classroom." During the month of May, 2000, Dohrman informed Mr. Larry Hermsmeyer, Superintendent of Schools of the School District, of her intent to secure an additional three college credits that summer in order to advance to the Step 9, BA+27 column of the salary schedule the 2000-01 school year. Hermsmeyer informed Dohrman that she could not advance on the salary schedule because the four credit hours she had earned from Chadron State in 1989 and 1990 for "Education 400" and "Child Psychology," although post-graduate hours, were undergraduate courses. Those

undergraduate courses, however, are the same courses which the School District relied upon and credited Dohrman for purposes of compensation and advancement to the Step 2, BA+9 column the 1991-92 school year.

12. Prior to the commencement of the 2000-01 school year, Dohrman earned three additional college credit hours from Kearney for “Special Topics.”

13. Although Dohrman had secured a total of 27 post-degree college credit hours prior to the commencement of the 2000-01 school year, Superintendent Hermsmeyer would not permit her to advance for purposes of compensation to the Step 9, BA+27 column. Dohrman signed the Addendum to her 2000-01 Teacher’s Contract received into evidence as Exhibit 21 on August 31, 2000, indicating a placement on the salary schedule for said year at Step 8, BA+18 for an annual salary of \$31,493.

14. By memorandum dated September 11, 2000, Dohrman informed Superintendent Hermsmeyer of her claim to advance to the Step 9, BA+27 column of the salary schedule, provided evidence of the additional college credit she had earned, and requested that she be advanced on the salary schedule and compensated accordingly. A true and correct copy of Dohrman’s memorandum to Superintendent Hermsmeyer of September 11, 2000, is received into evidence as Exhibit 16.

15. Economic terms of conditions of employment provided by the 2000-01 Negotiated Agreement received into evidence as Exhibit 26 are made a part of Dohrman’s individual Teacher’s Contract with the School District by reference and by operation of law.

16. The School District refused to advance Dohrman to the Step 9, BA+27 column on the salary schedule made a part of the Negotiated Agreement the 2000-01 school year, or to compensate Dohrman in an amount of \$33,371 for such placement.

17. The four credit hours secured by Dohrman in 1989 and 1990 for the classes “Education 400” and “Child Psychology” at Chadron State were college credit hours previously relied upon and credited to Dohrman by the School District for her advancement on the salary schedule to the BA+9 column in 1991-92, and were hours earned by her subsequent to her bachelors degree.

18. Dohrman performed all services required of her under the terms of her employment with the School District, and received compensation for her teaching duties in an amount of \$31,493 for the 2000-01 contract year. Dohrman receives 12 ~~24~~ paychecks annually under her employment contract with the School District, issued once a month ~~every other week~~ in equal installments.

Exhibit 31 (interlineations of parties shown by underscoring added language and striking through deleted language).

3. The pretrial order expressly limited the issues presented to the parties’ joint issues statement. That joint issues statement described the issues presented as follows:

1. Whether Dohrman, as a certificated employee of the School District the 2000-01 contract year, was entitled to a Step 9, BA+27 placement on the salary schedule made a part of the Negotiated Agreement (Exhibit 26) for an annual salary of \$33,371.

2. Whether Dohrman is entitled to move horizontally on the salary schedule for undergraduate hours earned post-bachelor's degree under the terms of the 2000-01 Negotiated Agreement.

3. Whether the language contained in the 2000-01 Negotiated Agreement (Exhibit 26) regarding horizontal advancement is ambiguous.

4. Whether Dohrman, by signing the addendum to her individual contract of employment with the School District the 2000-01 contract year (Exhibit 21), is estopped or waived her claim to advancement to the Step 9, BA+27 column of the salary schedule the 2000-01 contract year.

5. Whether Dohrman, by signing the contract or addendum to her contract of employment with the School District for the 2000-01 contract year, has entered into a contract which provides for economic terms and conditions of employment different than those provided by the negotiated agreement and, if so, whether an employee who is a member of a bargaining unit represented by a bargaining agent and subject to the terms of a negotiated agreement under the authority of the Nebraska Industrial Relations Act may enter into an individual contract of employment with the employer which provides for economic terms and conditions of employment different than those provided by the negotiated agreement.

6. Whether the refusal of the School District to advance Dohrman to the Step 9, BA+27 column of the salary schedule for an annual salary of \$33,371 the 2000-01 contract year constitutes a breach of Dohrman's employment contract with the School District, and if so, whether Dohrman has been damaged in an amount of \$1,878.

7. Whether the refusal of the School District to compensate Dohrman at a Step 9, BA+27 placement the 2000-01 contract year at an annual salary of \$33,371 constitutes a violation of the Nebraska Wage Payment and Collection Act, Neb. Rev. Stat. §§ 48-1228 *et seq.* (Reissue 1998).

8. Whether the refusal of the School District to compensate Dohrman for a Step 9, BA+27 placement the 2000-01 contract year constitutes a willful refusal to pay Dohrman earned wages within the meaning of the Nebraska Wage Payment and Collection Act.

9. Whether the School District should be required to make a payment as provided by Neb. Rev. Stat. § 48-1232 (Reissue 1998).

10. Whether Dohrman, pursuant to Neb. Rev. Stat. § 48-1231 (Reissue 1998), is entitled to an award of reasonable attorney's fees and costs.

4. The plaintiff's third amended petition states a cause of action for declaratory judgment. A suit for declaratory judgment is an action sui generis and may involve questions of law or equity or both; whether a declaratory judgment action is treated as an action at law or one in equity is to be determined by the nature of the dispute. *City of Lincoln v. Nebraska Pub. Power Dist.*, 10 Neb. App. 713, ___

N.W.2d ____ (2001). When the essence of the dispute sounds in contract, the action is to be treated as one at law. *Id.* That situation applies in this case.

5. This case requires application of basic contract principles. The construction of a contract is a matter of law. *Id.* In interpreting a contract, a court must first determine, as a matter of law, whether the contract is ambiguous. *Id.* A contract is ambiguous when a word, phrase, or provision in the contract has, or is susceptible of, at least two reasonable but conflicting interpretations or meanings. *Id.* Whether a document is ambiguous is a question of law. *Id.* A determination as to whether ambiguity exists in a contract is to be made on an objective basis, not by the subjective contentions of the parties; thus, the fact that the parties have suggested opposing meanings of the disputed instrument does not necessarily compel the conclusion that the instrument is ambiguous. *Id.*

6. A contract which is written in clear and unambiguous terms is not subject to interpretation or construction; rather, the intent of the parties must be determined from the contents of the contract, and the contract must be enforced according to its terms. *Keller v. Bones*, 260 Neb. 202, 615 N.W.2d 883 (2000). A contract is viewed as a whole in order to construe it. *Id.*

7. On the other hand, if a contract is ambiguous, the meaning of the contract is a question of fact, and a court may consider extrinsic evidence to determine the meaning of the contract. *City of Lincoln v. Nebraska Pub. Power Dist.*, *supra*. The interpretation given to a contract by the parties themselves while engaged in the performance of it is one of the best indications of true intent and should be given great, if not controlling, influence. *Id.*

8. The first question is, *which* contract requires analysis: the collective bargaining agreement or the individual teaching contract. This court concludes that the individual teaching contract merely incorporates the financial terms of the negotiated collective bargaining agreement. This question carries great import, as it determines *whose* interpretations will be considered as one of the best indications of true intent. Because the contract requiring analysis is the collective bargaining agreement, the contracting parties consist of the school district and the teachers' bargaining unit in the particular year, not just the school district and the plaintiff. Thus, the interpretations by the school district and by all of the teachers in performing the collective bargaining agreement constitute the best indications of true intent.

9. This court determines that the negotiated agreement is ambiguous on the primary question, namely whether the agreement places any limitations on the character of placement hours below the “MA+9” column. As to the earlier columns, the agreement is silent as to the meaning of the notations at the top of each column. Of course, the “BA” and “MA” designations are unambiguous. But the columns headed by “BA+” followed by a number introduce ambiguity. What does the *number* mean? There are really only two possible reasonable, but conflicting interpretations: (1) all post-degree credit hours earned without qualification, or, (2) post-degree credit hours earned in compliance with the reasonable educational requirements of the individual school district.

10. The defendant’s brief suggests that the lack of definition created an unenforceable void, citing *T.V. Transmission, Inc. v. City of Lincoln*, 220 Neb. 887, 374 N.W.2d 49 (1985). To the extent that defendant argues that the numbers have no meaning in the contract, this court rejects that argument. The contracting parties to the collective bargaining agreement meant *something* by the number added to the “BA” designation at the head of a column. The law requires this court to determine from the extrinsic evidence what the contracting parties intended. The performance by *all* contracting parties shows no dispute that at least one attribute was that it represented a number of college course credit hours earned by the teacher and approved by the superintendent.

11. Neither of the litigating parties argues that the contracting parties intended to impose any limitation of such hours to the teaching field of the individual teacher.

12. The evidence shows without any dispute that no formal policy on the issue was ever adopted by the defendant’s board of education.

13. The former superintendent of the defendant testified by deposition that the *practice* was that all hours be counted. That superintendent hired the plaintiff and gave the original credit for the questioned class hours when the plaintiff was initially placed on the salary schedule. The defendant’s counsel sought to impeach that testimony by evidence of the unhappy nature of the termination of the former superintendent’s relationship with the defendant. However, contemporaneous written reporting by that former superintendent of local practices regarding movement on the salary schedule, long before any suggested motive for bias against the district, supports his testimony. E.g., Exhibit 3A. There are some inconsistencies in the reporting from year to year, but on the whole these contemporaneous reports show

that the district formally imposed no limitation restricting advancement hours to graduate-level courses, except past the “MA” level. However, the former superintendent never testified that this was based on any interpretation of the collective bargaining agreement. Rather, his testimony is replete with references to district policies and practices.

14. On the other hand, the current superintendent testified by deposition that no other staff personnel relied upon any undergraduate-level courses during his tenure. During his first year as superintendent (the 1995-96 school year), the plaintiff remained placed on the “BA+9” level, for which she would not have been qualified under his interpretation. However, there is no indication that the matter came to his attention before May of 2000. The court does not find Exhibit 20 particularly clear on the specific issue presented here, and believes the defendant reads rather more into this exhibit than can be necessarily concluded from the face of the document. The absence of any grievance on this issue during the current superintendent’s tenure makes it quite likely that all submitted hours during that period were graduate-level course hours.

15. This court concludes that the contracting parties’ performance of the collective bargaining agreement from year to year does not show that the parties intended those numbers at the lower levels to impose any contractual requirement upon the district regarding the character of the hours that the district would determine appropriate to recognize.

16. Of course, collective bargaining does not occur in a vacuum. The laws regarding proper subjects of negotiation surround and control the negotiating process and the resulting collective bargaining agreement. Matters which are predominately matters of educational policy and management prerogative are not subject to mandatory negotiation, whereas conditions of employment are. *Metro. Tech. Com. Col. Ed. Assn. v. Metro. Tech. Com. Col. Area*, 203 Neb. 832, 281 N.W.2d 201 (1979). Thus, the public employer has the natural incentive to reduce the scope of bargained issues while the public employee bargaining unit has a reciprocal incentive to expand that scope.

17. The evidence persuades this court that the parties did not negotiate the character of or limitations upon the type of hours qualifying for salary schedule advancement, except as to advancement beyond the “MA” level when the “MA+9” level was added to the salary schedule beginning in the 1985-86 school year. The contracting parties to the collective bargaining agreement then adopted specific language

that clearly reflects the parties' intent regarding advancement beyond the "MA" level: "To move past the B.A.+36 or M.A. column, the hours are to be graduate hours in the teaching field." This language shows that the contracting parties knew how to express an agreement regarding the character of qualifying hours for advancement. The absence of similar language regarding advancement from lower levels, both before and after the June 3, 1985, agreement, demonstrates that the parties did not agree or attempt to agree on the character of qualifying hours regarding advancement from those lower levels.

18. Thus, to the extent that the defendant cites *T.V. Transmission, Inc.* for the proposition that this court cannot make the parties' agreement for them, this court agrees.

19. Because the collective bargaining agreement did not impose contractual restrictions upon the district's ability to approve or disapprove post-graduate credit hours, the defendant did not violate the collective bargaining agreement. Because the plaintiff's individual teaching contract incorporated the terms of the collective bargaining agreement, no violation of that agreement occurred. The individual teaching contract implemented the collective bargaining agreement to its full extent, and as the collective bargaining agreement did not limit the district's authority to implement reasonable practices and policies regarding the qualification of earned credit hours, the addendum signed by the plaintiff on August 31, 2000, finalized the district's determination of the number of qualifying placement hours for the year 2000-01 teaching contract.

20. It obviously follows that the plaintiff is not entitled to relief under the Nebraska Wage Payment and Collection Act. NEB. REV. STAT. § 48-1228 *et seq.* (Reissue 1998).

21. The defendant is entitled to judgment in accordance with these findings.

22. No taxable costs were incurred by the defendant. All taxable costs were incurred by the plaintiff. It is not necessary to enter a monetary judgment in favor of the defendant for taxable costs.

JUDGMENT: IT IS THEREFORE ORDERED AND ADJUDGED that:

1. The plaintiff's prayer for specific declaratory relief is denied.
2. Judgment is granted in favor of the defendant and against the plaintiff for dismissal of the plaintiff's third amended petition with prejudice to future action.
3. All costs are taxed to plaintiff.

Signed in chambers at **Ainsworth**, Nebraska, on **February 4, 2002**;
DEEMED ENTERED upon file stamp date by court clerk.

If checked, the court clerk shall:

- Mail a copy of this order to all counsel of record and any pro se parties.
Done on _____, 20____ by _____.
- Note the decision on the trial docket as: [date of filing] **Signed "Judgment" entered**.
Done on _____, 20____ by _____.
- Mail postcard/notice required by § 25-1301.01 within 3 days ("Declaratory relief
denied; third amended petition dismissed with prejudice at plaintiff's cost").
Done on _____, 20____ by _____.

Mailed to:

BY THE COURT:

William B. Cassel
District Judge